

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DISTRICT COURT
DISTRICT OF TEXAS
N
OCT 26 2005
CLERK, U.S. DISTRICT COURT
By NT
Dep. NT

Defendant.

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**3-05 CV-2105K**

## COMPLAINT SEEKING RECOVERY OF OVERPAYMENT – Page 1

perform various other tasks necessary to administer the Plan. Responsibility for day-to-day administration of the Plan (including recoupment of overpayments) has been delegated by the Verizon Employee Benefits Committee to the pension administration department within the Verizon human resources department in Coppell and Irving, Texas.

2. Defendant Michael Frawley ("Frawley") is a former participant in the Plan. He resides at 44 Port Street, Port Crane, New York 13833.

### **Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C. §§ 1132(a)(3) & (e)(1), and under 28 U.S.C. § 1331.

4. Venue is proper in this Court pursuant to 29 U.S.C. § 1132(e)(2) because the Plan is administered in this judicial district.

### **Factual Background**

5. Defendant Frawley is a former employee of Verizon Communications Inc. and/or its subsidiaries and predecessor corporations ("Verizon").

6. Frawley was hired by Verizon on June 1, 1975. On July 22, 2003, Frawley retired. Following his retirement from Verizon, in September 2003, Frawley received a lump sum pension distribution from the Plan in the amount of \$563,982.19.

7. Under the terms of the Plan, Frawley was entitled to receive a lump sum benefit of \$324,110.09 from the Plan based on his retirement from Verizon in July of 2003.

8. However, in September 2003, due to an administrative error, the Verizon Benefits Center mistakenly paid Frawley a lump sum benefit of \$563,982.19 from the Plan. This benefit was \$239,872.10 more than Frawley was entitled to receive under the

terms of the Plan. From March 10, 1985 through June 30, 2000, Frawley was employed with RH Donnelly. During Frawley's period of service with RH Donnelly, the company was not a participating employer in any former Bell Atlantic pension plan. Consequently, during Frawley's period of service with RH Donnelly, he neither participated in, nor accrued a benefit in, any former Bell Atlantic pension plan. As a result, all of Frawley's service with RH Donnelly should have been excluded when the lump sum pension benefit under the Plan was calculated. The overpayment was based on a benefit calculation that erroneously included the period of time when Frawley was employed by RH Donnelly. Therefore, Frawley is not entitled to the full amount of the lump sum benefit that was paid to him in September of 2003.

9. After discovering the overpayment made to Frawley, Bruce W. O'Neel, an employee in Verizon's pension department, wrote to Frawley on behalf of the Verizon Employee Benefits Committee explaining the payment error and requesting that Frawley remit the overpayment to the Plan.

10. Frawley has not returned the overpaid pension funds to the Plan, nor has he indicated that he will return the overpaid funds.

11. This action seeks to recover funds paid by the Plan that are in the constructive possession and legal control of Frawley, but belong in good conscience to the Plan.

### **Count I**

12. Plaintiff incorporates by reference the factual allegations of paragraphs 1-11 above.

13. Pursuant to 29 U.S.C. § 1132(a)(3), plaintiff is entitled to appropriate equitable relief to enforce the terms of the Plan providing that Frawley is entitled to receive a lump sum benefit of \$324,110.09, but nothing more, and to enforce the requirements of 29 U.S.C. § 1104. Plaintiff is entitled to impose a constructive trust on the overpayment of \$239,872.10, wherever it may be found, and to receive equitable restitution in the same amount to recoup the assets that rightfully belong to the Plan.

14. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

(a) That the Court enter a preliminary injunction prohibiting Defendant Frawley from dissipating, transferring, pledging, spending, transferring, disposing, or encumbering the overpayment of \$239,872.10, except to transfer the overpayment to the Plan or its agent, until this case can be resolved on the merits. Failure to grant such relief would result in a substantial threat that plaintiff will suffer irreparable harm.

(b) That the Court enter a judgment for plaintiff on Count I, impose a constructive trust in the amount of \$239,872.10 on the funds and/or equitable liens on the accounts, funds, or real property where those funds may be traced, and grant plaintiff the remedy of equitable restitution in the amount of \$239,872.10.

(c) That the court award pre- and post-judgment interest.

(d) That the court award plaintiff attorney's fees pursuant to 29 U.S.C. § 1132(g).

(e) Any other relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 26<sup>th</sup> day of October, 2005.

**MUNSCH HARDT KOPF & HARR, P.C.**

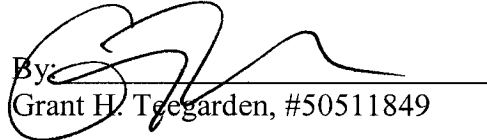
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214) 855-7584 (telecopy)

By:   
Grant H. Teggarden, #50511849

**ATTORNEYS FOR PLAINTIFF**

## ORIGINAL CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

## I. (a) PLAINTIFFS

The Verizon Employee Benefits Committee

## DEFENDANTS

Michael Frawley

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

Dallas County

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

New York

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Grant H. Teegarden, Munsch Hardt Kopf & Harr, P.C.  
Avenue, Suite 4000, Dallas, Texas 75202; (214) 855-7500

RECEIVED

OCT 26 2005

CLERK, U.S. DISTRICT COURT  
NORTH DALLAS

3-05 CV - 2105 K

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |                                         |                            |                            |                                                               |                            |                            |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

| CONTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | TORTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | FORFEITURE/PENALTY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | BANKRUPTCY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | OTHER STATUTES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><br><b>CIVIL RIGHTS</b><br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 444 Welfare<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 440 Other Civil Rights | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 362 Personal Injury - Med. Malpractice<br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability<br><br><b>PRISONER PETITIONS</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><b>Habeas Corpus:</b><br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other<br><br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input checked="" type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes |

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).

## VI. CAUSE OF ACTION

Brief description of cause. ERISA section 502(a)(3), complaint seeking reimbursement of overpayment and constructive trust

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG JUDGE \_\_\_\_\_